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**BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

JENNIFER LYNN ESAIN
669 E Magill Ave
Fresno, CA 93710

Registered Nurse License No. 582583

RESPONDENT

Case No. 2010-413

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about March 2, 2010, Complainant Louise R. Bailey, M.Ed.,RN, in her official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs, filed Accusation No. 2010-413 against Jennifer Lynn Esain (Respondent) before the Board of Registered Nursing.

2. On or about June 28, 2001, the Board of Registered Nursing (Board) issued Registered Nurse License No. 582583 to Respondent. The Registered Nurse License was in full force and effect at all times relevant to the charges brought herein and expired on January 31, 2009 and has not been renewed.

3. On or about March 2, 2010, Kami Pratab, an employee of the Board of Registered Nursing, Department of Consumer Affairs, served by Certified and First Class Mail a copy of the Accusation No. 2010-413, Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which was 7576 N. Tenth Street, Fresno, CA 93720.

A copy of the Accusation is attached as Exhibit A, and is incorporated herein by reference.

4. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c).

1 On or about March 11, 2010, the signed Certified Mail Receipt was returned to our office
2 indicating a delivery date of March 8, 2010 to 669 E Magill, Fresno, CA 93710.

3 5. Business and Professions Code section 2764 states:

4 The lapsing or suspension of a license by operation of law or by order or decision of
5 the board or a court of law, or the voluntary surrender of a license by a licensee shall not deprive
6 the board of jurisdiction to proceed with an investigation of or action or disciplinary proceeding
7 against such license, or to render a decision suspending or revoking such license.

8 6. Government Code section 11506 states, in pertinent part:

9 (c) The respondent shall be entitled to a hearing on the merits if the respondent files a
10 notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation
11 not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's
12 right to a hearing, but the agency in its discretion may nevertheless grant a hearing.

13 Respondent failed to file a Notice of Defense within 15 days after service upon her of the
14 Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 2010-
15 413.

16 7. California Government Code section 11520 states, in pertinent part:

17 (a) If the respondent either fails to file a notice of defense or to appear at the hearing, the
18 agency may take action based upon the respondent's express admissions or upon other evidence
19 and affidavits may be used as evidence without any notice to respondent.

20 8. Pursuant to its authority under Government Code section 11520, the Board finds
21 Respondent is in default. The Board will take action without further hearing and, based on the
22 evidence on file herein, finds that the allegations in Accusation No. 2010-413 are true.

23 9. The total costs for investigation and enforcement in connection with the Accusation
24 are \$11,012.00 as of March 26, 2010.

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DETERMINATION OF ISSUES

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2 1. Based on the foregoing findings of fact, Respondent Jennifer Lynn Esain has
3 subjected her Registered Nurse License No. 582583, to discipline.

4 2. A copy of the Accusation is attached.

5 3. The agency has jurisdiction to adjudicate this case by default.

6 4. The Board of Registered Nursing is authorized to revoke Respondent's Registered
7 Nurse License based upon the following violations alleged in the Accusation:

8 a. Violation of Business and Professions Code section 2761(a) - Unprofessional
9 Conduct.

10 b. Violation of Business and Professions Code section 2762(a) - Obtaining or possessing
11 controlled substances without a prescription.

12 c. Violation of Business and Professions Code section 2762(b) - Use of controlled
13 substance or alcohol to an extent or in a manner dangerous or injurious to
14 oneself and others.

15 d. Violation of Business and Professions Code section 2762(e) - Falsify, or make
16 grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital,
17 patient, or other record pertaining to a controlled substance.

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BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 2010-413

JENNIFER LYNN ESAIN.

669 E Magill Ave

Fresno, CA 93710

ORDER

Registered Nurse License No. 582583

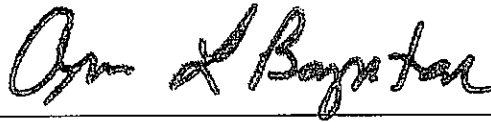
Respondent

IT IS SO ORDERED that Registered Nurse License No. 582583, heretofore issued to Respondent Jennifer Lynn Esain, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on June 7, 2010.

It is so ORDERED May 5, 2010.



FOR THE BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS

Attachment:

Exhibit A: Accusation No. 2010-413

Exhibit A

Accusation No. 2010-413

COPY

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Attorneys for Complainant

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 2010 - 413

JENNIFER LYNN ESAIN
7576 N. Tenth Street
Fresno, CA 93720
Registered Nurse License No. 582583

ACCUSATION

Respondent.

Complainant alleges:

PARTIES

1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her official capacity as the Interim Executive Officer of the Board of Registered Nursing ("Board"), Department of Consumer Affairs.

2. On or about June 28, 2001, the Board issued Registered Nurse License Number 582583 to Jennifer Lynn Esain ("Respondent"). Respondent's registered nurse license expired on January 31, 2009.

STATUTORY PROVISIONS

3. Business and Professions Code ("Code") section 2750 provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

1 4. Code section 2764 provides, in pertinent part, that the expiration of a license shall not
2 deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or
3 to render a decision imposing discipline on the license. Under Code section 2811, subdivision
4 (b), the Board may renew an expired license at any time within eight years after the expiration.

5 5. Code section 2761, subdivision (a), states, in pertinent part, that the Board may take
6 disciplinary action against a certified or licensed nurse or deny an application for a certificate or
7 license for unprofessional conduct.

8 6. Code section 2762 states, in pertinent part:

9 In addition to other acts constituting unprofessional conduct within the
10 meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a
11 person licensed under this chapter to do any of the following:

12 (a) Obtain or possess in violation of law, or prescribe, or except as
13 directed by a licensed physician and surgeon, dentist, or podiatrist administer to
14 himself or herself, or furnish or administer to another, any controlled substance as
15 defined in Division 10 (commencing with Section 11000) of the Health and Safety
16 Code or any dangerous drug or dangerous device as defined in Section 4022.

17 (b) Use any controlled substance as defined in Division 10 (commencing
18 with Section 11000) of the Health and Safety Code, or any dangerous drug or
19 dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or
20 in a manner dangerous or injurious to himself or herself, any other person, or the
21 public or to the extent that such use impairs his or her ability to conduct with safety to
22 the public the practice authorized by his or her license.

23 (c)
24 (e) Falsify, or make grossly incorrect, grossly inconsistent, or
25 unintelligible entries in any hospital, patient, or other record pertaining to the
26 substances described in subdivision (a) of this section.

27 7. Code section 4060 states, in pertinent part:

28 No person shall possess any controlled substance, except that furnished to
29 a person upon the prescription of a physician, dentist, podiatrist, optometrist,
30 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant
31 to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a
32 nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to
33 Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist
34 pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
35 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052 . . .

36 8. Health and Safety Code section 11170 states that no person shall prescribe,
37 administer, or furnish a controlled substance for himself.

9. Health and Safety Code section 11173, subdivision (a), states, in pertinent part, that "[n]o person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge . . ."

COST RECOVERY

10. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

CONTROLLED SUBSTANCES AT ISSUE

11. "Cocaine" is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (b)(6).

12. "Dilaudid", a brand of hydromorphone, is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (b)(1)(K).

13. "Marijuana" is a Schedule I controlled substance as designated by Health and Safety Code section 11054, subdivision (d)(13).

14. "Morphine sulfate" is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (b)(1)(M).

FIRST CAUSE FOR DISCIPLINE

(Diversion, Possession, and Self-Administration of Controlled Substances)

15. Respondent is subject to disciplinary action pursuant to Code section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined by Code section 2762, subdivision (a), in that Respondent did the following:

Diversion of Controlled Substances:

a. In or about 2006, while employed as a registered nurse in the Emergency Department ("ED") at St. Agnes Medical Center ("SAMC"), Fresno, California, Respondent obtained the

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1 controlled substances cocaine and Dilaudid by fraud, deceit, misrepresentation, or subterfuge, in
2 violation of Health and Safety Code section 11173, subdivision (a), as follows:

3 1. The ED's supply of controlled substances was dispensed from Accudose
4 automated dispensing machines ("Accudose") located in various areas of SAMC, designated as
5 "ER MAIN", "ER MINOR", and "ER Blue". In early 2006, Respondent began diverting
6 medications, including Dilaudid, that were ordered for certain patients. Respondent would
7 remove the Dilaudid from the Accudoses, administer the required dosages to the patients, then
8 inject herself with the remaining portions of the Dilaudid instead of wasting the medication as
9 required by SAMC's policies and procedures. Respondent would refill the syringes with water
10 and waste the water from the syringes. Respondent would also break into the Sharps container
11 located in the utility closet and take pre-filled syringes of medications for self-administration
12 (Respondent was frequently stuck by the syringes when breaking into the container). Respondent
13 used the medications she diverted while on duty in the ED and at home. Respondent eventually
14 became addicted to opiates (Dilaudid).

15 2. In and between July and August 2006, Respondent removed various quantities
16 of cocaine and Dilaudid from the Accudoses for certain patients when there were no physicians'
17 orders authorizing the medications for the patients, failed to chart the administration of the
18 cocaine and Dilaudid in the patients' medication administration records ("MAR"), and/or falsified
19 or made grossly incorrect or grossly inconsistent entries on the MAR's to conceal her diversion of
20 the controlled substances, as set forth in paragraph 17 below.

21 **Possession of Controlled Substances:**

22 b. In or about 2006, Respondent possessed various quantities of the controlled
23 substances cocaine and Dilaudid, as set forth in subparagraph (a) above, without valid
24 prescriptions from a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic
25 doctor, in violation of Code section 4060.

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1 **Self-Administration of Controlled Substances:**

2 c. In or about 2006, Respondent self-administered Dilaudid without lawful authority
3 therefor, as set forth in subparagraph (a)(1) above.

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(Use of Controlled Substances to an Extent or in a Manner**

6 **Dangerous or Injurious to Oneself and Others)**

7 16. Respondent is subject to disciplinary action pursuant to Code section 2761,
8 subdivision (a), on the grounds of unprofessional conduct, as defined by Code section 2762,
9 subdivision (b), in that in or about 2006, Respondent used the controlled substance Dilaudid to an
10 extent or in a manner dangerous or injurious to herself and/or others, as set forth in subparagraph
11 15 (a)(1) above.

12 **THIRD CAUSE FOR DISCIPLINE**

13 **(False Entries in Hospital/Patient Records)**

14 17. Respondent is subject to disciplinary action pursuant to Code section 2761,
15 subdivision (a), on the grounds of unprofessional conduct, as defined by Code section 2762,
16 subdivision (e), in that in and between July and August 2006, while on duty as a registered nurse
17 in the ED at SAMC, Respondent falsified, or made grossly incorrect, grossly inconsistent, or
18 unintelligible entries in hospital, patient, or other records pertaining to the controlled substances
19 cocaine, Dilaudid, and morphine, as follows:

20 **Patient #1:**

21 a. On August 15, 2006, at 1757 hours, Respondent removed cocaine 10% 4 ml solution
22 from the Accudose for the patient when, in fact, there was no physician's order authorizing the
23 medication for the patient. Further, Respondent failed to chart the administration of the cocaine
24 on the patient's MAR or the Progress Notes, document the wastage of the cocaine in the
25 Accudose, and otherwise account for the disposition of the cocaine 10% 4 ml solution.

26 **Patient #4:**

27 b. On August 27, 2006, at 1525 hours, Respondent removed cocaine 10% 4 ml solution
28 from the Accudose for the patient when, in fact, there was no physician's order authorizing the

1 medication for the patient. Further, Respondent failed to chart the administration of the cocaine
2 on the patient's MAR or the Progress Notes, document the wastage of the cocaine in the
3 Accudose, and otherwise account for the disposition of the cocaine 10% 4 ml solution.

4 **Patient #6:**

5 c. On July 6, 2006, at 1400 hours, Respondent removed one tablet of Dilaudid 2 mg
6 from the Accudose for the patient when, in fact, there was no physician's order authorizing the
7 medication for the patient. Further, Respondent failed to chart the administration of the Dilaudid
8 on the patient's MAR or the Progress Notes, document the wastage of the Dilaudid in the
9 Accudose, and otherwise account for the disposition of the one tablet of Dilaudid 2 mg.

10 **Patient #7:**

11 d. On July 10, 2006, at 0724 hours, Respondent removed Dilaudid 2 mg from the
12 Accudose for the patient, charted on the patient's MAR that she administered Dilaudid 1 mg to
13 the patient at 0800 hours, but documented in the Accudose that she wasted a total of 4 mg
14 Dilaudid at 0925 hours as witnessed by another nurse.

15 **Patient #9:**

16 e. On July 14, 2006, at 1158, 1525, and 1642 hours, Respondent removed Dilaudid 2
17 mg at each time interval, for a total of 6 mg of Dilaudid, from the Accudose for the patient,
18 charted on the patient's MAR that she administered Dilaudid 1 mg to the patient at 1150 hours
19 and another 1 mg of Dilaudid at 0350 hours¹, and documented in the Accudose that she wasted
20 Dilaudid 2 mg at 18:12 hours as witnessed by another nurse (accounting for 4 mg of the
21 medication), but failed to account for the disposition of the remaining 2 mg of Dilaudid.

22 **Patient #10:**

23 f. On July 19, 2006, at 1135, 1213, 1220, and 1353 hours, Respondent removed
24 Dilaudid 2 mg at each time interval, for a total of 8 mg of Dilaudid, from the Accudose for the
25 patient, but charted on the patient's MAR that she administered Dilaudid 2 mg to the patient at
26 1120 hours, 2 mg of Dilaudid at 1225 hours, and 1 mg of Dilaudid at 1350 hours, for a total of 5

27 ¹ Respondent may have administered the medication at 3:50 p.m. and mistakenly recorded
28 the administration at 0350 hours instead of at 1550 hours.

1 mg of the medication for the patient, and documented in the Accudose that she returned 2 mg of
2 Dilaudid to ER Blue at 12:22 hours and wasted 2 mg of Dilaudid at 14:06 hours as witnessed by
3 another nurse, accounting for 9 mg of the Dilaudid.

4 **Patient #11:**

5 g. On July 19, 2006, at 1448, 1522, and 1800 hours, Respondent removed Dilaudid 2
6 mg at each time interval, for a total of 6 mg of Dilaudid, from the Accudose for the patient,
7 charted on the patient's MAR that she administered Dilaudid 2 mg to the patient at 1500 hours,
8 Dilaudid 1 mg to the patient at 1640 hours, and another Dilaudid 1 mg at 1800 hours, for a total
9 of 4 mg of the medication for the patient, but documented in the Accudose that she wasted
10 Dilaudid 2 mg at 1823 hours and another Dilaudid 2 mg at 1921 hours as witnessed by another
11 nurse, accounting for 8 mg of the medication.

12 **Patient #12:**

13 h. On July 25, 2006, at 0955, 1103, and 1656 hours, Respondent removed Dilaudid 2
14 mg at each time interval, for a total of 6 mg of Dilaudid, from the Accudose for the patient.
15 Respondent charted on the patient's MAR that she administered Dilaudid 0.5 mg to the patient at
16 1040 hours and another Dilaudid 0.5 mg at 1655 hours. Respondent charted on the MAR that she
17 administered a third dose of Dilaudid 0.5 mg to the patient, but failed to record the time of
18 administration. Further, Respondent documented in the Accudose that she wasted Dilaudid 2 mg
19 at 1054, 1503, 1504, and 1749 hours, for a total wastage of 8 mg of Dilaudid, as witnessed by
20 another nurse.

21 **Patient #13:**

22 i. On July 2, 2006, at 1413 hours, Respondent removed morphine sulfate 10 mg from
23 the Accudose for the patient. Respondent charted on the patient's MAR that she administered
24 morphine sulfate 8 mg to the patient, but failed to record the time of administration, and
25 documented in the Accudose at 1422 hours that she wasted the entire 10 mg of morphine sulfate
26 as witnessed by another nurse.

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1 **Patient #14:**

2 j. On July 16, 2006, at 1128 hours, Respondent removed Dilaudid 4 mg from the
3 Accudose for the patient when, in fact, there was no physician's order authorizing the medication
4 for the patient. Further, Respondent charted on the patient's MAR that she administered Dilaudid
5 2 mg to the patient at 1120 hours and Dilaudid 1 mg to the patient at 1140 hours, for a total of 3
6 mg of the medication for the patient, but documented in the Accudose at 1834 hours that she
7 wasted the entire 4 mg of Dilaudid as witnessed by another nurse.

8 **PRAYER**

9 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
10 and that following the hearing, the Board of Registered Nursing issue a decision:

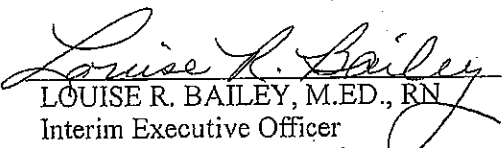
11 1. Revoking or suspending Registered Nurse License Number 582583, issued to
12 Jennifer Lynn Esain;

13 2. Ordering Jennifer Lynn Esain to pay the Board of Registered Nursing the reasonable
14 costs of the investigation and enforcement of this case, pursuant to Business and Professions
15 Code section 125.3;

16 3. Taking such other and further action as deemed necessary and proper.

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18 DATED: _____

9/2/10


LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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